IN THE

SUPREME COURT OF THE UNITED STATES.

ELLEN J. O'PHINNEY, GERARD C. TOBEY, HORACE P. TOBEY ET AL., *Plaintiffs in Error*,

vs.

THE TRUSTEES OF THE SHEPPARD AND ENOCH PRATT HOSPITAL, *Defendant in Error.*

MOTION TO DISMISS THE WRIT OF ERROR.

And now comes the defendant in error, "The Trustees of the Sheppard and Enoch Pratt Hospital," a corporation created under the laws of the State of Maryland, and by its attorneys, William Pinkney Whyte, George R. Willis and Francis T. Homer, respectfully moves that the writ of error in this case be dismissed for want of jurisdiction, for the reason apparent upon the face of the record, that no federal question is presented therein or arises thereon.

The case is this:

"The Trustees of the Sheppard Asylum" was incorporated by chapter 274 of the Acts of the General Assembly of Maryland of 1853. By its second section it was provided, "That the object and design of the said corporation is hereby declared to be the founding and maintaining an asylum for the insane, the entire management of which shall be vested in the said Trustees."

It was provided in its first section, that the corporation shall be able and capable in law to acquire property, real, personal and mixed, by gift, *devise* or purchase, * * * and *generally to do every other act and thing necessary* to carry into effect the provisions of this act, and *to promote the object and design of said corporation.* (Record, page 6.)

By his will, Moses Sheppard, on the 16th January, 1855, after bequeathing to this corporation certain specific articles, devised and bequeathed to the said corporation all the rest, residue and remainder of his estate of every kind and description whatever, whether real, personal or mixed, and wheresoever situate or being, which he might own or have any right or title to at the time of his decease, and whether the same be acquired by him at that time or acquired by him at any time thereafter, to it, the said corporation, and its successors forever, it being his meaning and intention to make said corporation the residuary legatee and devisee of his last will and testament." (Record, page 99.)

In this manner this corporation began its career of usefulness.

On or about the 17th day of September, 1896, Enoch Pratt, a wealthy citizen of Baltimore, died, leaving a last will and testament, and codicil, which were duly admitted to probate, and in the residuary clause of the said last will he provided as follows:

"Having in my lifetime liberally provided for my niece and nephews hereinafter named, I do now hereby give, devise and bequeath all the rest, residue and remainder of my estate of every kind and description, whether real, personal or mixed, and wherever the same may be situated, of which I may die possessed or be in any way entitled to at the time of my death, after the payment of all debts justly due by me, and after satisfying all the devises and bequests hereinbefore set forth, to the trustees of the Sheppard Asylum, a corporation already incorporated by the General Assembly of the State of Maryland by said name, style and title, and its successors for-

ever, it being my intention and meaning to make said corporation, the trustees of the Sheppard Asylum, the residuary legatee and devisee under this, my last will and testament.

"And I direct my executors to set over, transfer and convey by proper deeds, assignments and transfers, the said residue of my estate, to the said corporation, upon and subject, however, to the following condition and bargain, namely:

"That the said trustees shall adopt as the name and style of said corporation, the title of 'The Trustees of the Sheppard and Enoch Pratt Hospital,' and shall obtain at the first session of the General Assembly of Maryland, after my death, an amendment to their charter, authorizing the said change of title and adopting the said name of 'The Trustees of the Sheppard and Enoch Pratt Hospital' as the future title of said corporation.

"While I do not wish to alter the operations and management in the working of the said asylum as now existing and being carried on, it is my wish and will, that the income from my said residuary estate shall be used to complete the present buildings and grounds and for the erection of such other buildings or building as will accommodate not less than two hundred additional inmates, and after that, the income from my aforegoing donation shall be devoted mainly to the care of the indigent insane in the most advisable manner at *very low charges* or absolutely *free*, as the trustees of said corporation in the exercise of their best judgment as to the rate to be charged, may deem best and wisest to promote the object of this donation." (Record, page 13.)

Letters testamentary were duly granted by the Orphans' Court aforesaid to James A. Gary and Arnold S. Hyde, with but a nominal bond, in accordance with the request of the testator.

They entered upon their duties without delay, and on the 26th of January, 1897, the president of the said corporation informed them by letter, that the board of trustees had adopted the following resolution: "That the Trustees of the

Sheppard Asylum agree to accept the bequest of the late Enoch Pratt on the conditions contained in the will," and that they would take proper steps to present the matter to the Legislature at its next session, and would be ready to co-operate with the executors in any way to carry out Mr. Pratt's benevolent design. (Record, page 24.)

That, subsequently, the said corporation, in compliance with the condition annexed to said bequest and devise, did apply to and obtain from the General Assembly of Maryland, at its January session, 1898, (which was the first session held by the General Assembly of Maryland after the death of the said Enoch Pratt), an amendment to its charter authorizing the change of title, and adopting the name, as suggested in said will, of The Trustees of the Sheppard and Enoch Pratt Hospital, as the future title of the said corporation, all of which will more fully appear from the Act of the General Assembly aforesaid, approved March 2, 1898, and known as Chapter 17 of the Acts of 1898. (Record, page 11.)

That subsequently to the approval of the said Act of the General Assembly by the Governor of Maryland, that is to say, on the 3d day of March, 1898, the Board of Trustees of the said Sheppard Asylum duly met and adopted a resolution, accepting the said amendment to the charter of said corporation and adopting the name, "The Trustees of the Sheppard and Enoch Pratt Hospital," as the future title of said corporation. (Record, page 13.)

The defendant in error having performed the condition imposed upon it by the will of Mr. Pratt, became entitled to the residuary estate of the testator under the provisions of his will, and the executors of his will having refused to deliver and transfer said residuary estate after demand therefor had been made, the defendant in error on the 7th day of March, 1898, filed its bill of complaint in the Circuit Court Number Two of Baltimore City against the executors of the last will and testament of Mr. Pratt to require them to transfer and deliver possession of the said residuary estate in their hands,

as such executors, in accordance with the terms of the testator's will; and thus originated the first of the cases consolidated in the Record.

On March the 10th, 1898, James A. Gary and Arnold S. Hyde, executors of Mr. Pratt's will, filed their bill of complaint in the said Circuit Court against the defendant in error; the alternative residuary legatees and devisees under Mr. Pratt's will; and the heirs at law and next of kin of Mr. Pratt, which proceeding was in the nature of a bill of interpleader; and thus was instituted the second case consolidated in the Record.

On March 12, 1898, the defendant in error filed its other bill against James A. Gary and his co-executor for an injunction and the appointment of a receiver to collect the rents and profits of, and to manage and control, the real estate passing to the defendant in error under the residuary clause of Mr. Pratt's will; and thus resulted the third case consolidated in the Record.

On the 31st day of March, 1898, Isaac Pratt, Jr., and Susanna K. Tobey, the next of kin and heirs at law of Mr. Pratt, filed their bill in the said Circuit Court against the appellees, the executors of Mr. Pratt's will, and the alternative devisees and legatees thereunder, claiming to be entitled to the entire residuary estate of the late Enoch Pratt; and thus was commenced the fourth case consolidated in the Record.

By an order of the Circuit Court Number Two of Baltimore City, the four cases above mentioned were consolidated, (page 178 of the Record), and on the same day the decree was passed determining that the defendant in error, as the residuary legatee and devisee under Mr. Pratt's will, was entitled to the residuum of his estate. (Page 190 of the Record.)

From this decree, passed on the 25th day of July, 1898, the said Isaac Pratt, Jr., and Susan K. Tobey, the heirs at law and next of kin of Enoch Pratt, the testator, and from the same decree, Ellen J. O'Phinney, Gerard C. Toby, Horace C. Tobey and others, the alternative residuary legatees

and devisees under the said last will of Enoch Pratt, (which last named parties are the plaintiffs in error here), took an appeal according to the law and practice in such cases in the State of Maryland, to the Court of Appeals of Maryland, and the said appeal was argued before the said Court of Appeals at the October term, 1898, and the decree of the said Circuit Court No. 2 of Baltimore City, made in the cause on the 25th day of July, 1898, was unanimously affirmed. (Record, pages 198 and 210.)

All of which will appear by the Record in this case and by the official report thereof, as contained in the 88th volume of the Maryland Reports, page 633.

Record, also, pages 108, 211.

So far as the decree of the Court of Appeals of Maryland, affirming the decree of the Circuit Court No. 2 of Baltimore City, affects the claim of Isaac Pratt, Jr., and Susannah K. Tobey, the heirs at law and next of kin of Enoch Pratt, the testator, it has remained unchallenged; but the plaintiffs in error, Ellen J. O'Phinney and others, the alternative residuary legatees and devisees under the said last will of Enoch Pratt, sued out the writ of error in this case. (Record, page 214.)

In this case, where the heirs at law and next of kin of the said Enoch Pratt contended that the residuary clause of the will of Enoch Pratt creates a trust, which is void, because so vague and uncertain, as to the objects to be benefited that it cannot be enforced, and that, therefore, the next of kin and heirs at law—a brother and a sister of the testator—are entitled to the residuum; and that the residuary clause creates a perpetuity, the opinion and decree of the Court of Appeals stands in favor of the defendant in error. (Record, page 198.)

Having decided in that branch of the consolidated case, in which the heirs at law and next of kin of Mr. Pratt were concerned, that no trust was, or was intended to be, created by the residuary clause of Mr. Pratt's will, the Court of

Appeals of Maryland then disposed of the contention made by the appellants, the plaintiffs in error, that the Act of Assembly of 1898, chapter 17, changing the name of the Sheppard Asylum to the Sheppard and Enoch Pratt Hospital is unconstitutional and void, as in conflict with section 10 of Article 1 of the Constitution of the United States. The opinion of the Court of Appeals of Maryland on this point is so concise and conclusive, that we ask leave to make it a part of this brief of argument:

"When the original charter of the Sheppard Asylum—the *Act of 1853, ch. 274*, was granted, the Constitution of Maryland adopted in eighteen hundred and fifty-one was in force. By *Section 47 of Article 3* of that Constitution it was provided that 'corporations may be formed under general laws, but shall not be created by special Act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the object of the corporation cannot be attained under general laws. *All laws and special Acts pursuant to this section may be altered from time to time or repealed.*' This provision was intended to be, and so far as language could make it so, was a clear and explicit limitation upon the power of the General Assembly to pass thereafter any Act of incorporation not subject to repeal or amendment by the Legislature. Upon the adoption of that constitution, every charter thereafter granted was subject to the paramount provisions of the organic law, which was binding on the Legislature and the corporation alike.

"The right of the State to repeal or alter a charter was an express condition upon which the grant was made in every instance after the Constitution of 1851 became effective, and an acceptance of the grant was an unequivocal, as it was an irrevocable, acceptance of that condition. In this particular charter by the ninth section it is expressly declared that 'the General Assembly may at any time alter or amend this Act.' This right to alter or amend embodied in the Constitution and written in the charter, became a term or stipulation in the contract to which the State and the incorporators were

the only parties. The right of the State under these circumstances to change the charter of a body corporate has been distinctly and finall settled by this Court, in State vs. N. C. Ry. Co., 44 Md. 164; Am. Coal Co. vs. Con. Coal Co., 46 Md. 22; Appeal Tax Court vs. N. C. Ry. Co., 50 Md. 419; Jackson vs. Walsh, 75 Md. 304; and by the Supreme Court of the United States, in Shields vs. Ohio, 95 U. S. 324, and Sinking Fund Cases, 89 U. S. 720. The State having not only under the organic law, but under the explicit terms of the contract contained in the charter, the unqualified authority to alter or amend the original Act of incorporation, passed the *Act of 1898, chapter 17*, simply changing the name of the corporation, and this Act was assented to and accepted by the trustees of the Sheppard Asylum. Even if there had been no power reserved to make such an amendment, still, if made by the State and accepted by the corporation, it would have been perfectly valid. The Regents, etc., vs. Williams, 9 G. & J. 416; Jackson vs. Walsh, *supra*, 316."

It is perfectly apparent that no federal question could arise, as to the impairment of a contract with the State by a subsequent amendment to a charter, which contained as a part of the original obligation, the reserved right in the General Assembly of the State to alter and amend the charter. And where the corporation, with which the State had contracted has accepted the amendment and made it part of its charter, it seems impossible, that a question as to the violation of the contract could arise.

As the Supreme Court said in the case of Wilson vs. North Carolina, 169 U. S. 595: "Upon the case made by the plaintiff in error, the federal question, ~~•~~ which he attempts to raise is so unfounded in substance, that we are justified in saying that it does not really exist."

There was, in fact, no federal question before the State Court, the decision of which was necessary to the determination of the case, for there was no party before that Court who could complain, that the Act of the General Assembly

of Maryland of 1898, chapter 17, impaired the obligation of a contract in violation of section 10 of Article 1 of the Constitution of the United States.

The plaintiffs in error had no right under any contract, with which the Act of Assembly of 1898, chapter 17 was in conflict.

The Court of Appeals clearly states this point:

"But laying all this aside, it is obvious and certain that if the parties to a contract—the State and the body corporate in this instance—see fit to modify or change that contract, and accordingly do change it by a mutual concurrence, as was done by the passage of the Act of 1898, ch. 17, by the State, and the acceptance of that act by the body corporate, not only is there no impairment of the obligation of the original contract; but even if there were, or could be under such conditions, no one other than the *parties* to that contract could invoke the provisions of the Federal Constitution to uphold it. And this the Supreme Court has recently declared in Williams vs. Eggleston, 170 U. S. 309. Speaking for the Court Mr. Justice Brewer said: 'The parties to a contract are the ones to complain of a breach, and if they are satisfied with the disposition which has been made of it and of all claims under it, a third party has no right to insist that it has been broken.' Clearly, therefore, these alternative residuary legatees and devisees, who are *not* parties to the contract contained in the charter, and who were only to take under the will in the event that the Legislature did not change the name of the corporation, have no standing to insist that, though the Legislature *did* change the name, it had no power to do what it did do; and that they are, consequently, entitled to the property.

"We hold, then, that the *Act of 1898, ch. 17*, is not invalid for any of the reasons assigned, and as the other questions involved have been disposed of in the preceding case, the decree in so far as it affects these appellants will be affirmed."

No writ of error has been sued out on this last-named decree.

It is, therefore, respectfully submitted on the part of the defendant in error, that upon the pleadings and opinion of the Court of Appeals of Maryland, that the plaintiffs in error were entire strangers to the original contract, the obligation of which, they complain, was impaired by the legislation of 1898, and they have no standing in this Court to insist that it has been broken, and therefore, the writ of error should be dismissed with costs.

WM. PINKNEY WHYTE,
GEORGE R. WILLIS,
FRANCIS T. HOMER,
Counsel for the Defendant in Error.

Baltimore, February, , 1900.

To the Plaintiffs in Error:

Gentlemen—We hereby respectfully notify you, that on the first motion day after the expiration of three weeks from this date, we shall in open Court ask leave to file the aforegoing motion and move that in accordance with its terms and for the reasons which it assigns, the writ of error in said case shall be dismissed.

WM. PINKNEY WHYTE,
GEORGE R. WILLIS,
FRANCIS T. HOMER,
Counsel for the Defendant in Error.

Service of the aforegoing motion and notice, admitted this day of February, A. D. 1900.

Counsel for Plaintiffs in Error.